

APP-5

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO.: 5:22-ct-03448-FL

NATHANIEL R. WEBB,)
)
 Plaintiff,)) DEFENDANT'S MOTION FOR
 v.)) SUMMARY JUDGMENT
)
 TEXTBEHIND, INC.,))
)
 Defendant.))

**DECLARATION OF ZIA RANA IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

1. I, Zia Rana, III, certify that I have personal knowledge of the facts set forth herein. I am over the age of eighteen, I currently reside at 4505 Brightwater Ct, Apt. T2, Owings Mills, MD 21117, and am fully competent to testify to the facts in this declaration.

2. I am President and CEO of Defendant TextBehind, Inc., employed since 2014, and I am responsible for general oversight of the company, its technology maintenance, and contracting.

3. Many Departments of Corrections have experienced an increase in recent years in attempts to mail drugs, weapons and other contraband to prison inmates, and this is changing the way that prisons receive mail. Many prisons now use a vendor to scan incoming mail and deliver scanned copies to the facilities. TextBehind was established in 2013 to provide this and related services. We are one

of several third-party vendors that scan incoming mail for state prisons.

4. Appendix 2 is a copy of the agreement between the North Carolina Department of Public Safety (NCDPS) and TextBehind which is publicly available on the Prison Policy Initiative website at <https://www.prisonpolicy.org> › contracts › documents. Per Section I.1.D, we are engaged to process friend and family handwritten mail addressed to the NCDPS offender population. TextBehind must comply with all statutes, ordinances, regulations and laws of all federal, state, county, municipal and local governments applicable to performing this service, and we are legally obligated to not process privileged mail which includes: 1) "Legal Mail" defined as mail to and from attorneys, paralegals, courts, consular officials, legal aid services, etc.; 2) mail from Department of Public Safety Officials; 3) mail from other Government Officials; as well as 4) medical mail from healthcare providers. NC Dept. of Pub. Safety, Policy and Procedures Ch. D § .0308(b)–(d) (2012), https://files.nc.gov/ncdps/div/Prisons/Policy_Procedure_Manual/D0300_Inmate_Use_of_the_Mail.pdf; see also Appendix 1. The correctional facilities individually process all privileged mail themselves, and NCDPS Chapter D section 0310 details the processing procedure for incoming and outgoing mail. *Id.* On its website, the NCDPS informs the public that personal mail sent to inmates in North Carolina:

should NOT be sent directly to prisons at this time. Scanned mail is now being delivered electronically to inmate tablets for most offenders, no longer printed and hand delivered.

All offender mail should be addressed to TextBehind's facility in Maryland in this manner:

Name and Opus Number

Name of Prison (do not abbreviate)
P.O. Box 247
Phoenix, MD 21131

* * *

Mail not addressed this way will be returned to the sender.
(IMPORTANT: The return address must include the full first name and full last name of the sender. Do not use initials. TextBehind will return mail that does not meet this standard.)

NC Dept. of Adult Corrections, Offender Mail, <https://www.dac.nc.gov/divisions-and-sections/prisons/offender-mail>. In its "frequently asked questions" section, the NCDAC further directs that: "If you are an attorney or employee of a law firm and must send legal mail to an offender, contact the prison for instructions." *Id.*

5. TextBehind diligently complies with applicable rules and regulations for processing inmate mail. Thus, upon receipt of any mail to an inmate, TextBehind inspects the unopened mail piece to ensure that it is not privileged as per above. If it is privileged, the mail is logged in a spreadsheet, stamped undeliverable and returned unopened to sender.

6. All personal non-privileged mail received by TextBehind is processed by attaching a cover sheet that records sender, addressee, postmark date, and the date and time of processing. TextBehind then inspects each mail piece to ensure that it contains only communications or photos, and does not contain any drugs, weapons, or other contraband. In the event that a mail piece contains contraband TextBehind promptly notifies the proper law enforcement agency as well as the North Carolina prison facility where the inmate currently resides. Mail pieces that pass the physical inspection are scanned and TextBehind makes an electronic copy available to the

North Carolina prison system via TextBehind's Comprehensive Access and Mail Monitoring Portal ("CAMMP" or the "NDCPS Portal"), where designated staff review it to ensure that it contains only communications or photos, and does not contain any contraband. Once a scanned mail piece has been fully inspected and approved, the North Carolina correctional facility staff either print onsite and deliver it physically to the inmate, or make it electronically available to inmates on tablet computers. TextBehind's role in this process is to receive, screen, scan, and make an electronic copy available to the institution.

7. TextBehind also provides a Friends and Family Portal that allows for digital mail composition to inmates such as greeting cards, video messaging, picture upload and document upload. We also offer an option to send personalized greeting cards and online drawing tools for children. These are likewise subject to inspection and made available on the NCDPS Portal, and either printed onsite and delivered physically to the inmate or made electronically available to inmates on tablet computers. TextBehind does not reduce the resolution of digital mail or alter it in any way whatsoever. Videos and photos can be transmitted in native resolution. What is delivered to the inmate is exactly what was sent. Friends and family are free to choose whether they partake in this additional service. The cost of this service is assessed to the senders—not the inmates receiving the mail. Sending an electronic message through our Friends and Family Portal is cheaper than sending a letter through the mail. The cost of a one-ounce First Class Mail stamp from USPS is \$0.66. We charge as low as \$0.49 cents for an equivalent electronic message (which can include as many

as four photos). Friends or family members may utilize our Friends and Family Portal ***to transmit content that cannot be transmitted otherwise, or just to save money on postage.***

8. I am familiar with Plaintiff Webb's allegation at pages 2–3 of his Complaint that "*Mail that previously took days to receive is now taking weeks*" and that "*mail sent to TextBehind for forwarding never arrives, or is returned to the sender for various reasons. Images that were promised to be high-quality or blurred and cheaply printed.*" (D.E. 1, p. 2). I am familiar with Plaintiff Webb's allegation at page 3 of his Complaint that TextBehind's "*poorly provided paid services are geared toward forcing prisoners such as myself to use their paid services just to maintain contact with family and friends, and businesses.*" (D.E. 1, p. 2–3). There is no truth to these statements nor any evidence to support them.

9. Appendix 3 contains all personal mail sent to Plaintiff Webb at Harnett Correctional institution omitting only nude and topless images provided by "Quick's Fantasy Flix." TextBehind's production included the cover sheets it attaches to mail that records sender, addressee, postmark date, and the date and time of processing. TextBehind stores each personal non-privileged mail piece that it processes along with postmark, date of receipt, and date of processing. Appendix 4 is a summary of letter number, postmark date, processing date, total days between postmark and process date, and days attributable to TextBehind (for all mail in Appendix 3). The average time between mailing and processing was 8.45 days, not weeks as alleged. TextBehind *invariably* processes mail within one business day of its receipt, and on

average makes an electronic scan available to the institution 1.25 days after receipt for print or tablet delivery to the inmate. This is true regardless of volume. Consequently, the bulk of the 8.45 days is attributable to sender delay and/or USPS delivery delays not TextBehind. For example, bates no. D1 000992 was a letter from The Paralegal Law Project dated 22 February 2022, yet the postmark indicates that it was not mailed until May 3, 2022. It was *received and processed* by TextBehind ten days later on May 13, 2022, and made available the very next day to the institution for delivery to Mr. Webb. TextBehind is not responsible for the delay. It is also noteworthy that USPS delivery times vary and tend to increase in the January-February timeframe after the holidays due to a mass surge in mail and post office closures. All but one of twenty-six letters to Mr. Webb were delivered, just one being rejected by Harnett Correctional Institution not by TextBehind.

10. A cursory review of the contents of Appendix 3 compels the conclusion that TextBehind's scans are of the highest quality. We employ trained staff using full-color 200 dpi commercial scanners, and we provide the institutions with 600 dpi full color printers to print the scans. In the mail-scanning industry, this technology is considered to be top-of-the-line. All mail contents, including both sides of the envelope and all contents inside, are scanned using the highest quality standards in the industry. There is not a single mail piece to Plaintiff Webb in Appendix 3 that does not faithfully reproduce the original in full and vibrant color. Indeed, the actual evidence in Appendices 3–4 compels the conclusion that the images are high-quality and not blurry. A review of the metrics of Appendix 4 demonstrates that mail delivery

is still taking days not weeks, and that properly-addressed mail sent to TextBehind does indeed arrive and is not returned to the sender. Moreover, the evidence shows that TextBehind processes every mail piece in one business day and is not responsible for sender or USPS delays. To the best of my knowledge and belief, TextBehind has diligently processed all personal mail addressed to Plaintiff Webb in this manner just as we have been contracted to do.

11. TextBehind's services are not "*poorly provided.*" TextBehind's mail scanning error rate is less than 1:10,000 scans. Moreover, we never charge prisoners for anything at all. Consequently, Plaintiff Webb's alleged bait-and-switch scheme is implausible. There simply is no intent to "force prisoners such as myself to use their paid services just to maintain contact with family and friends, and businesses." (D.E. 1, pp. 2–3)." If Plaintiff's family members do not wish to save money on postage by using TextBehind's *electronic messaging service* that is their free choice.

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I declare, under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.



By:

Zia Rana, III

November 17, 2023

Date

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